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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON – PORTLAND DIVISION

UNITED STATES FIRE INSURANCE
COMPANY, a Delaware Corporation;

Plaintiff,

v.

MOTHER EARTH SCHOOL, an Oregon
Non-Profit Corporation; BRICE LEMKE,
Guardian *ad litem* for B.L., a minor under the
age of 14; MICHELLE MOORE, Guardian
ad litem for S.M. and S.M., both minors under
the age of 14; JOHN AND JANE DOES 1
THROUGH 25, all whose true names are
unknown;

Defendant,

No.

COMPLAINT IN INTERPLEADER

Plaintiff in Interpleader United States Fire Insurance Company (hereinafter “USFIC”) submits the following Complaint in Interpleader.

I. PARTIES

1.1 Plaintiff in Interpleader USFIC is a foreign insurer organized under the laws of the State of Delaware and is licensed to transact business in Oregon and at all material times has transacted business in Oregon.

1.2 Defendant in Interpleader Mother Earth School (hereinafter “Mother Earth School”) was at all times material an Oregon non-profit corporation, doing business as an outdoor school for pre-school and elementary school-aged children. At all material times, Mother Earth School had its principal place of business in Multnomah County, Oregon. Upon information and belief, Mother Earth School is no longer operating.

1.3 Upon information and belief, Defendant in Interpleader B.L., is a female minor child, DOB 2012, and a resident of Clackamas County, Oregon. B.L. is represented by her natural and legal father, Brice Lemke, who is serving as B.L.’s Guardian *ad litem* in this case and who, upon information and belief, is also a resident of Clackamas County, Oregon.

1.4 Upon information and belief, Defendant in Interpleader S.M. (hereinafter “S.M.(1)”), is a female minor child, DOB 2012, and a resident of Clackamas County, Oregon. Upon information and belief, Defendant in Interpleader S.M. (hereinafter “S.M.(2)”), is also a female minor child, DOB 2012, and a resident of Clackamas County, Oregon. Upon information and belief, S.M.(1) and S.M.(2) are biological twins of one another. S.M.(1) and S.M.(2) are represented by their natural and legal mother, Michelle Moore, who is serving as S.M.(1) and S.M.(2)’s Guardian *ad litem* in this case and who, upon information and belief, is also a resident of Clackamas County, Oregon.

1.5 Upon information and belief, Defendants John and Jane Does 1 through 25 (the “Jane Doe Defendants”) are individuals that are other potential abuse victims whose names and addresses of residences are unknown.

II. JURISDICTION AND VENUE

2.1 For the purposes of diversity, USFIC is a citizen of the State of Delaware. All Defendants are citizens of the State of Oregon. Diversity is therefore complete.

2.2 This action includes claims for insurance benefits that are in excess of \$75,000.

2.3 Jurisdiction is properly before this Court pursuant to U.S.C. 28 §1332 *et seq.* as complete diversity exists among the parties and the amount in controversy exceeds \$75,000.

2.4 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 1397. This action involves multiple claims to insurance proceeds arising out of negligence and premise liability claims that are alleged to have occurred in Multnomah County, Oregon. All claimants are believed to reside in this judicial district. As a result, venue is properly before this Court.

III. FACTS

A. Background Facts Regarding the B.L. Lawsuit.

3.1 On June 7, 2018, Brice Lemke, acting as Guardian *ad litem* for B.L., filed a lawsuit and commenced an action against Mother Earth School entitled *Brice Lemke, Guardian ad litem for L.B. v. Mother Earth School*, Multnomah County Circuit Court, State of Oregon, Cause No. 18CV23482 (hereinafter the “Underlying L.B. Lawsuit”)¹.

3.2 In the Complaint filed in the Underlying L.B. Lawsuit, B.L. alleges that at all material times Mother Earth School was an outdoor school for pre-school and elementary school-aged children operating in Multnomah County, Oregon. B.L. alleges that Mother Earth School was managed, overseen, and operated by certain adult volunteers and employees, who were duly authorized agents acting within their scope of agency with Mother Earth School.

3.3 B.L. further alleges that in the Spring of 2017 she was a student and paying customer duly enrolled in the preschool portion of Mother Earth School.

¹ In the Underlying Lawsuit, B.L. was referred to as “L.B.” This appears to be a scrivener’s error.

3.4 B.L. further alleges that during this time period another student, identified as “Boy No. 1”, attended Mother Earth School and became friends with another boy, identified as “Boy No. 2”.

3.5 B.L. alleges that Boy No. 1 and Boy No. 2 bullied B.L. by physically and verbally harassing her. B.L. alleges that agents of Mother Earth School knew, or in the exercise of due diligence should have known, that Boy No. 1 and Boy No. 2 were harassing L.B.

3.6 B.L. further alleges that Mother Earth School had received notice that Boy No. 1 was dangerous to other children prior to him enrolling in Mother Earth School. B.L. also alleges that Mother Earth School received complaints from parents of other students that Boy No. 1 was harassing other children.

3.7 B.L. further alleges that on or about June 1, 2017, while at school, Boy No. 1 and Boy No. 2, working in concert with one another, attacked and battered B.L. while she was in the woods, in a physically helpless position, and further subjected her to sexual abuse by touching her genitals with their hands and a foreign object.

3.8 B.L. alleges that she suffered non-economic damages in the amount of \$1,000,000.00 as a direct and proximate result of this alleged conduct. Specifically, B.L. alleges she has incurred, and will incur in the future, severe and debilitating physical, mental, and emotional injury, including pain and suffering, physical and emotional trauma, and permanent psychological damage.

3.9 B.L. also alleges that she suffered economic damages in the amount of \$20,000.00 as a direct and proximate result of the alleged conduct. Specifically, B.L. alleges she has incurred mental health counseling and medical expenses of \$10,000.00, and in the

future will incur mental health counseling and medical expenses in the amount of an additional \$10,000.00.

3.10 Based on the allegations set forth in her Complaint, B.L. has asserted causes of action against Mother Earth School in the Underlying L.B. Lawsuit for premises liability and negligence.

3.11 In total, B.L. alleges damages of \$1,020,000.00 against Mother Earth School in the Underlying L.B. Lawsuit.

B. Background Facts Regarding S.M.(1) and S.M.(2) Claimants.

3.12 Michelle Moore, as Guardian *ad litem* for S.M.(1) and S.M.(2), has also alleged various instances of sexual and physical abuse committed against S.M.(1) and S.M.(2) at the former premises of the Mother Earth School. Michelle Moore has alleged that Mother Earth School is liable for negligence in relation to its alleged acts and omissions, but Michelle Moore, S.M.(1), and S.M.(2) have not commenced a lawsuit against Mother Earth School at this time.

3.13 Specifically, Michelle Moore alleges that S.M.(1) and S.M.(2) were enrolled at the preschool/kindergarten formerly operated by Mother Earth School during the 2016 – 2017 schoolyear.

3.14 Michelle Moore has further alleged that in the Fall of 2016, another student began molesting S.M.(1) and S.M.(2) at the premises of the Mother Earth School. Michelle Moore alleges that the abuse continued for at least several months.

3.15 Michelle Moore has further alleged that the abuse of S.M.(1) and S.M.(2) was first reported to representatives of the Mother Earth School in the Fall of 2016, and that additional concerns were raised throughout the school year. However, Michelle Moore alleges

that representatives of the Mother Earth School disregarded these allegations and initially took no action.

3.16 Michelle Moore alleges she filed a report with the Oregon State Department of Human Services in June 2017 regarding the alleged misconduct.

3.17 Michelle Moore has alleged that the misconduct at issue resulted from the Mother Earth School's negligence and lack of appropriate training.

3.18 Michelle Moore has alleged damages in an unknown amount arising from the Mother Earth School's alleged negligence, which includes but is not limited expenses related to mental health counseling.

C. Background Facts Regarding the Jane Doe Defendants.

3.19 Upon information and belief, there are other individuals who were formerly students at the Mother Earth School who are potential abuse victims. It is believed that any such individuals may have suffered damages and may at some point in time assert claims against the Mother Earth School for its alleged acts and omissions regarding the abuse.

3.20 At this time, the identity of these potential abuse victims is unknown. As a result, they have been identified in this Complaint as the Jane Doe Defendants.

D. The USFIC Insurance Policy.

3.21 At the time of the alleged abuse, Mother Earth School was insured pursuant to a commercial general liability policy issued by USFIC to Mother Earth School, as part of its membership in the purchasing group Sports and Recreation Providers Association. The policy, policy number SRPGPM-101-0716, was in effect during the September 2, 2016 to September 2, 2017 policy period (hereinafter, the "USFIC Policy").

3.22 The USFIC Policy provides liability coverage pursuant to the Commercial General Liability Coverage Form CG 00 01 04 13. The USFIC Policy provides coverage pursuant to its terms and conditions and not otherwise.

3.23 The USFIC Policy has liability limits in the amount of \$1,000,000 per occurrence, and a general aggregate limit of \$2,000,000.

3.24 The USFIC Policy also contains and is subject to an Abuse or Molestation Endorsement Exclusion and Limited Exception to Exclusion with Coverage Sublimit, Coverage Form FSPG 101.0.0027 02 12 (hereinafter, the “Abuse Endorsement”).

3.25 Pursuant to the Abuse Endorsement, the liability limits for any applicable abuse or molestation-related claim is limited to a \$100,000 sublimit for each occurrence, and a \$100,000 general aggregate sublimit.

3.26 In part, the insuring agreement in the Commercial Liability Coverage Form provides as follows:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.

But:

- (1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of

judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies to “bodily injury” and “property damage” only if:
- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
 - (2)** The “bodily injury” or “property damage” occurs during the policy period; and
 - (3)** Prior to the policy period, no insured listed under Paragraph 1. Of Section II - Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, than any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

CG 00 01 04 13, page 1 of 16.

3.27 Under the terms of the USFIC Policy, the Abuse Endorsement states as follows:

**ABUSE OR MOLESTATION ENDORMSENT EXCLUSION AND LIMITED
EXCEPTION TO EXCLUSION WITH COVERAGE SUBLIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

LIMITS OF INSURANCE

Each Occurrence Limit	See limit set forth in the certificate of coverage issued to the “Named Insured Member”
Aggregate Limit	See limit set forth in the certificate of coverage issued to the “Named Insured Member”

A. COVERAGE – ABUSE OR MOLESTATION

1. With respect to any claims arising out of or related to, directly or indirectly, actual or threatened abuse or molestation that are not otherwise excluded from coverage as set forth below and that otherwise qualify for coverage under the terms of the policy, the following conditions and limitations apply:
 - a. The most we will pay for any damages for “bodily injury”, “property damage” or “personal and advertising injury” arising out of or related to, directly or indirectly, actual or threatened abuse or molestation is the Limit of Insurance set forth in the Certificate of Coverage issued to the “Named Insured Member” which shall be either \$100,000 or another specified amount up to the maximum amount of \$1,000,000, regardless of the number of:
 - (1) Insureds;
 - (2) Claims made or “suits” brought; or
 - (3) Persons or organizations making claims or bringing “suits”.
 - b. Subject to the General Aggregate Limit, the most we will pay for the sum of all damages because of all “bodily injury”, “property damage” and “personal and advertising injury” arising out of or related to, directly or indirectly, actual or threatened abuse or molestation is the Aggregate Limit set forth in the Certificate of Coverage issued to the “Named Insured Member”.
 - c. Subject to Paragraph **b.** above, the most we will pay for damages because of all:
 - (1) “Bodily injury” and “property damage” arising out or related to, directly or indirectly, any one “occurrence” of actual or threatened abuse or molestation; and
 - (2) “Personal and advertising injury” sustained by any one person or organization caused by an offense arising out of or related to, directly or indirectly, actual or threatened abuse or molestation; is the Each Occurrence Limit set forth in the Certificate of Coverage issued to the “Named Insured Member”.
 - d. Regardless of the number of acts of actual or threatened abuse or molestation, or the period of time over which such acts take place, or the number of persons upon whom such acts are inflicted, all “bodily injury”, “property damage” or “personal and advertising injury” arising out of or related to, directly or indirectly, such acts committed by one individual or by two or more individuals acting together or in concert, will be considered one “occurrence” subject to Abuse or Molestation Each Occurrence Limit set forth in the Certificate of Coverage issued to the “Named Insured Member”.
 - e. No coverage is afforded under this Policy for any claim arising out of or related to, directly or indirectly, actual or threatened abuse or molestation which is part of

a series of related acts of actual or threatened abuse or molestation if the first such series of acts took place outside the policy period.

B. EXCLUSIONS

The following exclusion is added to **2. Exclusions** under **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and **SECTION 1 – COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY: ABUSE OR MOLESTATION EXCLUSION AND LIMITED EXCEPTION TO EXCLUSION**

This insurance does not apply to “bodily injury”, “property damage” or personal and advertising injury” arising out of the actual or threatened abuse or molestation by anyone of any person.

However, subject to all other terms of the policy, this exclusion does not apply to claims against an insured for failing to prevent or stop any abuse or molestation, provided the insured did not:

- (1) participate in the abuse or molestation; or
- (2) remain passive upon gaining actual or constructive knowledge of the abuse or molestation.

All other terms and conditions remain unchanged.

FSPG 101.0.0027 02 12, pages 1 – 2.

3.28 As a result, it is understood that the only insurance proceeds that are potentially subject to the abuse-related claims at issue is contained within the \$100,000 abuse sublimit.

E. The Multiple Claims Against the USFIC Policy’s Liability Limits.

3.29 As set forth in the Underlying L.B. Lawsuit, B.L. has made a liability claim against the Mother Earth School. B.L. alleges, in part, that the Mother Earth School’s negligence caused him to suffer damages in the amount of \$1,020,000.00.

3.30 A claim was made to USFIC in relation to B.L.’s alleged damages and the Underlying L.B. Lawsuit.

3.31 B.L. has indicated a belief that she is entitled to insurance proceeds available under the USFIC Policy that was issued to the Mother Earth School.

3.32 Michelle Moore, on behalf of S.M.(1) and S.M.(2), has also made a liability claim to USFIC relating to the alleged negligence of the Mother Earth School.

3.33 S.M.(1) and S.M.(2) have not disclosed the amount and extent of the damages they claim to have suffered as a result of the alleged negligence of the Mother Earth School.

3.34 S.M.(1) and S.M.(2) have indicated a belief that they are entitled to insurance proceeds available under the USFIC Policy that was issued to the Mother Earth School.

3.35 In addition to the three claims made by L.B., S.M.(1), and S.M.(2), upon information and belief, USFIC understands there are other individuals, the Jane Doe Defendants, who were formerly students at the Mother Earth School who are potential abuse victims.

3.36 It is believed that the Jane Doe Defendants may have suffered damages allegedly arising out of the Mother Earth School's alleged negligence.

3.37 At this time, none of the Jane Doe Defendants have made a claim against the Mother Earth School or to USFIC. However, upon information and belief, one or more of the Jane Doe Defendants may assert claims against the Mother Earth School at some point in time for Mother Earth School's alleged negligence regarding the abuse.

3.38 Upon information and belief, USFIC understands that one or more of the Jane Doe Defendants may claim they are entitled to insurance proceeds available under the USFIC Policy that was issued to the Mother Earth School

3.39 The amount and extent of the Jane Doe Defendants' alleged damages is unknown at this time.

3.40 Based on these known and unknown claims, the total amount claimed against Mother Earth School exceeds the available abuse sublimit set forth in the USFIC policy.

IV. CAUSE OF ACTION – INTERPLEADER

4.1 Pursuant to 28 U.S.C. § 1335, USFIC is in possession of insurance proceeds in the amount of \$100,000.00 for which multiple parties are asserting claims of right.

4.2 USFIC does not take any position as to which party(ies) or claimant(s) may be entitled to these insurance proceeds, or the amount to which any particular party or claimant may be entitled.

4.3 Pursuant to 28 U.S.C. § 1335, USFIC disclaims any right to the disputed funds and will deposit the full amount of such money with the Clerk of the Court in order to fulfill USFIC's obligation to make these indemnity proceeds available to claimants.

4.4 USFIC asks that the Court make any and all necessary orders for the distribution, preservation, or protection of the subject funds as allowed by 28 U.S.C. § 1335, 1397, 2361, and Fed. R. Civ. P. 22, for any parties claiming an entitlement thereto.

V. REQUEST FOR DECLARATORY RELIEF

5.1 An actual and justiciable controversy exists as to whether USFIC has, by depositing the disputed funds with the Clerk of the Court pursuant to 28 U.S.C. § 1335 and bringing this Complaint in Interpleader pursuant to 28 U.S.C. § 1335, 1397, 2361, and Fed. R. Civ. P. 22, fulfilled its duty to indemnify its insureds pursuant to the terms and conditions of the subject policy.

5.2 USFIC asks that the Court grant declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 by entering a judicial determination that USFIC has no further obligation to provide any further indemnity to Mother Earth School with respect to any claims arising from the alleged acts or omissions that underlie this Complaint in Interpleader.

5.3 USFIC reserves the right to withdraw its defense of any pending claims, and to deny defending any future claims, upon the disbursement of insurance proceeds from the Court's registry.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States Fire Insurance Company prays for judgment against Defendants in Interpleader and each of them as follows:

6.1 That the Defendants in Interpleader be required to interplead and litigate amongst themselves their claims to the proceeds described herein.

6.2 That the Court determine and enter any appropriate orders setting forth the proper recipients of the proceeds described herein.

6.3 For a declaration that USFIC is not obligated to pay any costs accruing in this action pursuant to 28 U.S.C. § 1335 and 2361.

6.4 For a declaration that USFIC has fully complied with its duty to indemnify its insureds for the claims arising from the underlying conduct and that USFIC does not owe any further duty to indemnify any insureds or any other party.

6.5 For a declaration that USFIC has fully complied with its duty to indemnify its insureds for the claims arising from the underlying conduct and that USFIC does not owe any further duty to indemnify any insureds or any other party.

6.6 For a declaration that USFIC is authorized to withdraw its defense of any pending claims, and deny defending any future claims, upon the disbursement of insurance proceeds from the Court's registry.

6.7 That USFIC be awarded its costs in bringing this action to be determined by the Court and paid out of the proceeds described herein.

6.8 For such other and further relief as the Court deems just and equitable.

DATED this 3rd day of October, 2018.

LEATHER & ASSOCIATES, PLLC

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/s/ Eric J. Neal

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